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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 4th August, 1953

S.R.O. 1586.—Whereas the election of Pandit Govind Ballabh Pant, as a Member of the Legislative Assembly of the State of Uttar Pradesh from the Bareilly Municipality constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Abdul Rauf son of Shri Abdul Ghafoor, Mohalla Azamnagar, Bareilly;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT LUCKNOW

ELECTION PETITION No. 209 OF 1952

Sri N. S. Lokur—Chairman.

Shri S. N. Mitra—Member.

Sri Azizul Haque Fakhruddin—Member.

Abdul Rauf—Petitioner.

Versus

1. Hon'ble Pandit Govind Ballabh Pant;
2. Sri Akshaya Brahmachary;
3. Sri Tribeni Sahai;
4. Sri Manmohan Lal Mathur;
5. Sri Damodar Swarup Seth;
6. Sri Revati Prasad;
7. Sri Pertap Chandra Azad;
8. Sri Khunni Lal;
9. Sri Raghunandan Pershad—Respondents.

Sri H. K. Ghosh, Advocate, assisted by Sri Bishun Singh, Advocate and Sri Krishna Swarup Varma, Advocate, appeared for the petitioner.

Sri Iqbal Ahmed, Advocate, and Sri S. K. Dar, Advocate, assisted by Sri Banwari Lal Agarwal, Advocate, and Sri Ram Krishna Shukla, Advocate, appeared for respondent No. 1.

JUDGMENT

This is an election petition filed under Section 81 of the Representation of the People Act, 1951 (hereinafter to be called the Act), to have the election of respondent No. 1 to the Uttar Pradesh Legislative Assembly from the Bareilly Municipality Constituency, declared void, and respondent No. 1 disqualified. According to the petitioner he and respondents Nos. 1 to 9 were candidates at the election which was held on 31st January, 1952. Respondent No. 1 who secured the largest number of votes was declared elected, and the petitioner has challenged his election on various grounds set out in paragraphs 1 to 13 of his petition. At the instance of respondent No. 1, the following preliminary issues were framed and arguments on both the sides were heard, namely:—

1. Is the petitioner's application accompanied by all the lists required by section 83, sub-section (2) of the Representation of the People Act, 1951?
2. Do they set forth full particulars as required by the said section?
3. Whether Raghunandan Prasad, originally impleaded as respondent No. 9 in the petition, was the person duly nominated as a candidate in the Constituency?
4. Is the petition and are the lists duly signed and verified?
5. What would be the effect of a finding in the negative on any of the above issues?

It will be convenient to state at the outset the facts which have given rise to issue No. 3. Admittedly one Raghunandan Prasad, son of Ishwari Prasad, residing in Mohalla Biharipur, was a duly nominated candidate at the election, and under Section 82 of the Act he had to be joined as a party to this election petition. The petitioner has impleaded Raghunandan Prasad as respondent No. 9, but instead of stating his residence as Mohalla Biharipur, he has stated it as Mohalla Kali Bari, and has not mentioned his father's name. When the notice of the petition was sent, it was received by a different Raghunandan Prasad, who lives in Mohalla Kali Bari and whose father's name is Jagannath Prasad. He too is an elector, his name appearing at serial No. 934 in the Electoral Roll, but he was not a nominated candidate. He appeared before us and put in an application stating that he had no connection with the petition, that he had never applied for nomination, that he was a practising lawyer at Bareilly and that he had been wrongly impleaded, and praying that the petition should be dismissed against him and that he should be awarded special costs. A few days later Raghunandan Prasad of Mohalla Biharipur appeared voluntarily and stated that the other Raghunandan Prasad, known as Taiyal, had fraudulently received the notice, that he was the real respondent No. 9, and that he should be allowed to put in his written statement. The petitioner also put in an application requesting that the address of respondent No. 9 should be corrected by substituting "Biharipur" for "Kali Bari". That application was granted "as far as the address was concerned". The application of Raghunandan Prasad of Mohalla Kali Bari was heard and the following order was passed on it:—

"This applicant must have known that the notice was not meant for him. After opening the envelope he should, in fairness, have returned it to the Election Tribunal, stating that he was not the person for whom it was intended. At any rate he had no business to appear through an Advocate and incur needless expenditure, when he is himself an Advocate. His request for costs is rejected, and he should be treated as not being a party to these proceedings."

It is now urged on behalf of respondent No. 1 that the person who was impleaded as respondent No. 9 was not the person duly nominated, and as Raghunandan Prasad of Mohalla Biharipur, who was a duly nominated candidate, was not impleaded, the petition must be rejected for non-joinder of a necessary party, as we did in Election Petition No. 287 of 1952 (reported on page 1034 of the *Gazette of India Extraordinary*, Part II, Section 3, dated December, 20 1952). This is undoubtedly an ingenious contention, and it was pressed on behalf of respondent No. 1 with skilful and apparently plausible reasoning by his learned counsel Sri Iqbal Ahmed, but we think it highly improbable that the petitioner, being himself a nominated candidate, did not know who the other nominated

candidates were and made a mistake about the identity of one of them. Both the Mohallas, Kali Bari and Biharipur, are not far from each other and the petitioner had wrong information about the address of the nominated candidate Raghunandan Prasad. In paragraph 2 of the petition, he stated clearly that respondent Nos. 1 to 9 were candidates at the election. So he described respondent No. 9 not only as a resident of Mohalla Kali Bari but also as a nominated candidate. This latter description does not apply to Raghunandan Prasad of Mohalla Kali Bari and the former does not apply to the candidate Raghunandan Prasad. In these circumstances we hold that the petitioner intended to implead the nominated candidate, but gave his address incorrectly, and that respondent No. 9 was in fact Raghunandan Prasad who lived in Mohalla Biharipur and had been a nominated candidate. The mistake in the address given by the Petitioner cannot alter the identity of the person whom he meant to implead. Hence our finding on issue No. 3 is in the negative.

We will next consider issues Nos. 1, 2 and 4 together, as they deal with connected matters, the alleged absence of duly signed and verified lists with all the necessary particulars and a proper verification to the petition, as required by Section 83 of the Act. For the proper appreciation of the objections out of which these issues have arisen, it is necessary to understand the nature of the requirements laid down in Section 83.

Article 329(b) of the Constitution says:—

“No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature”.

Accordingly, the Representation of the People Act, 1951, has laid down in Chapter II of Part VI how, to what authority and in what manner an election petition should be presented, and in Section 80 has reiterated that

“No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.”

Section 83, which appears in the said Part, provides

- (1) Notwithstanding anything in the foregoing provisions of this Chapter, the Election Commission may, at any time before the last date appointed under clause (c) of sub-section (2) of section 39 for the withdrawal of candidatures at any election referred to in that sub-section, direct by notification in the Official Gazette, that the method of voting by postal ballot shall be followed at such election.
- (2) When any notification has been issued under sub-rule (1), the provisions of rules 73 to 82 shall not be applicable, but the following rules 84 to 89 shall apply in relation to voting at the election to which such notification relates if a poll is taken at such election.

The provisions of this section are so mandatory that non-compliance with them entails the dismissal of the petition under Section 85. Hence in order to be maintainable, an election petition must

- (a) contain a concise statement of the material facts relied upon,
- (b) be signed by the petitioner,
- (c) be verified in the manner laid down in O. VI R. 15 of the Code of Civil procedure, 1908, and
- (d) (if any corrupt or illegal practice is alleged) be accompanied by a list of full particulars of them, signed and verified as laid down in O. VI R. 15 of the said Code.

It is contended in the present case that the petition, though signed by the petitioner, is not properly verified, and though it contains allegations of corrupt and illegal practices, it is not accompanied by a list of the particulars thereof, duly signed and verified.

There are four annexures appended to the petition, which are claimed to be the lists required by Section 83(2) of the Act. The word “list” is nowhere defined in the Act, and if these fulfil the requirements of the Section, it does not matter by what name they are called. A list does not cease to be a list if it is called an “annexure”. It is true that these are very clumsily drafted and Annexures ‘B’ and ‘C’ are not self-contained, and can make no sense unless read with the

allegations in the petition. On each of them the petitioner has signed only once, at the foot of the verification. There is no separate signature at the foot of the annexures. But we do not think that this is a fatal defect. The list or annexure together with the verification bears the petitioner's signature. The expression used in Section 63 "signed by the petitioner and verified" is intended to show that the person verifying need not necessarily be the petitioner himself. Under O. VI R. 15 of the Code the petition may be verified by any person proved to be acquainted with the facts of the case. If that person is other than the petitioner, then the petition has to bear the signature of the petitioner and the verification that of the person verifying it. But if the petitioner himself verifies it, then his single signature below both of them would meet the requirements of O. VI R. 15 of the Code. At the most it is an irregularity which does not vitiate the validity of the annexures.

Annexure 'D' may be left out of consideration at the moment, as it does not refer to any corrupt practice. Annexure 'B' is duly verified as being "true on knowledge". But Annexure 'A' which is verified as being "true on belief and knowledge" does not specify which of the twenty-one items therein are true on knowledge and which of them are true on belief, as required by O. VI R. 15 of the Code. But we may take the petitioner to mean that all the twenty-one items are personally known to him, and the word "belief" is a superfluity, meaning only that he has faith in his own knowledge. In *Rajit Ram v. Kateshar Nath* (I.L.R. 18 All. 396), the verification of the plaint was similarly worded and it was held that, though not free from ambiguity, it was in substantial compliance with the provisions of Section 52 of the Code of Civil Procedure, 1882, corresponding to O. VI R. 15 of the present Code. The verification is dated as 28th April, 1952, but the place of verification is not mentioned. The verification of the plaint is also dated the same day and it mentioned the place as Delhi. So we are prepared to take it that the annexures were also verified at Delhi at the same time and condone the omission to repeat the word "at Delhi" in the verification below them. So, we regard Annexures 'A' and 'B' as duly signed and verified by the petitioner. But the same cannot be predicated of Annexure 'C', which is verified as being true on belief. If the belief is based on information received, then only the verification would be proper. But belief may be based on surmise, astrology, dream or some logical conclusion drawn from surrounding circumstances. No such belief would serve the purpose. Under O. VI R. 15 of the Code the belief should be based on information received by the petitioner himself. Apart from other defects in it, which we will point out later, we hold that Annexure 'C' is not duly verified.

At this stage it is necessary to consider which of the allegations in the petition amount to a corrupt practice, major or minor. It is alleged in paragraph 6(a) of the petition that the return of election expenses made by the petitioner is false since several items of expenditure are not shown in it, and that if all of them are included, the total exceeds Rs. 8,000, which is the maximum permissible under Section 77 read with Rule 117 and Schedule V. The former is a minor corrupt practice under section 124(4) and the latter is a major corrupt practice under section 123(7). These allegations have to be embodied in a list accompanying the petition. But only one item, the expenses of loud speakers, is mentioned in Annexure 'A'.

We will now briefly indicate which of the allegations in the remaining paragraphs amount to a corrupt practice:—

<i>Paragraph</i>	<i>Allegation</i>	<i>Kind of corruption</i>	<i>Section</i>
6 (b)	Taking assistance of Government servants to canvass votes.	Major	123 (8)
6 (c)	Feeding of voters	Major	123 (4)
6 (d)	Undue influence by threats	Major	123 (2) proviso 124 (5)
6 (e)	Appeal by Muslim heads to vote for respondent and 12 No. I.	Minor	124 (5)
6 (f)	Raking up communal sentiments and Paying Muslim owned papers to do so	Minor	124 (5)
6 (g)	Offer of bribe to petitioner to withdraw	Major	123 (7) 123 (1)

Paragraph	Allegation	Kind of corruption	Section
9	Impersonation by voters owing to the non-use of indelible ink.	Major and also minor.	123 (3) 124 (2)
10	All the above acts even if done without the connivance of respondent No. 1 or his agents.	Minor . . .	124 (1)
11	False return of election expenses	Minor . . .	124 (4)
13	Congress party expenses not included in the return of expenses as they would exceed the permissible total.	Major Minor . . .	123 (7) 124 (4)

All these items should have been set out in a duly signed and verified list or lists accompanying the petition as required by section 83(2) of the Act. That subsection sets out categorically what the list should necessarily contain. The list must set forth full particulars of the alleged corrupt or illegal practices, and must include as full a statement as possible as to

- (1) the names of the parties alleged to have committed such corrupt or illegal practice;
- (2) the date of the commission of each of them; and
- (3) the place of the commission of each of them.

Shri Ghosh, the learned Advocate for the petitioner, took great pains to point out that all these particulars have been embodied in the petition itself and the omission to attach a separate list is only an irregularity, and he cited several English authorities in support of his contention. Even in England particulars are required to be supplied by the petitioner. But they need not be set out in a list accompanying the petition. In England, where the petition is drawn in such a way as to make it uncertain what are the precise charges alleged, it is the practice to order immediately particulars in writing of the nature and character of the charges alleged. Such particulars are known as "short particulars", and the order usually requires these particulars to be ordered within seven days. A petitioner will also be ordered to give full particulars of charges specified. These particulars are known as "long particulars", and are now usually ordered to be delivered ten days before the trial if there be under eighty charges, or twelve days if over eighty charges, or sixteen days if over 120 charges (vide pages 217 and 218 of Sir Hugh Fraser's Law of Parliamentary Elections and Election Petitions). "It may be true that Indian Election Law is based on English Election Statutes, but it differs from English law widely in numerous particulars and should be regarded as a separate corpus, the Indian Legislators having adopted some and discarded others of the English Election provisions. It seems to us that the Indian Legislature intended to make their statutory provisions complete in themselves, and there is nothing whatever to indicate that there was any intention that the Indian courts should administer English Common Law provisions." (Malik Barkat Ali v. Maulvi Muhamarram Ali, Hammond's Election Cases 487 at p. 473). It is rightly pointed out in the case of Atre v. Naravne (reported in the Gazette of India Extraordinary, Part I, Section 1, page 2359, at p. 2362) that "the law by which elections to the Indian Legislature are governed is laid down by the Representation of the People Act, 1951, and the Rules made thereunder and it is not open to us to go beyond these provisions to the principles of English Common Law by which elections in England are partly governed". The Indian law is very clear and mandatory as to what the petition must contain and what must accompany it, and the omission to comply with these requirements entails the penalty of nothing short of dismissal of the petition by the Election Commission under Section 85 of the Act.

Shri Ghosh argued, with a good deal of plausibility, that the purpose of the list is served by a full statement of the necessary particulars in the body of the petition itself and that the technical defect of the omission to give a separate list should not be used to defeat the ends of justice. Even this allegation that the necessary particulars are contained in the petition is not true. What the particulars required are is set out in Section 83(2). The object with which particulars are required to be furnished are the same in India as in England, though the time of supplying them may be different, and hence we may safely refer to the English case law on the subject. In Ponterrack (1892), 4 O. & H. at p. 202) Cave, J., said:—

"They (the particulars) are intended to give the respondent notice of what are the charges which are intended to be proved against him and it

is necessary for his defence that he should at once incur the expense of investigating those cases and of preparing himself for trial."

And again in Worcester (1892, Day's Election Cases p. 188), Wills, J., observed:—

"To deliver particulars which contain nothing but the name of the candidate and the character of the offence suggested and leave everything else in blank, and to attempt under them to fish out some possible material from which the blank may be filled up, is an abuse of procedure."

To avoid such an abuse, the Indian Legislature has categorically laid down in Section 83(2) what are the particulars required to be set out by the petitioner, and unfortunately they are not to be found even in the body of the petition itself. This can be easily seen from the following analysis of the allegations in the petition:—

<i>Paragraph</i>	<i>Allegation</i>	<i>Particulars wanting</i>
6 (a)	Vouchers filed are not proper in many respects . Which vouchers and in what respects?	When? What expenses were incurred by respondent No. on their account ?
	Important persons (named) had been to the constituency many times and worked for the election of respondent No. 1.	
	Several important Muslims from outside did the same.	Who, when etc.? No details.
	Thirty workers from the Hill Districts and 100 from other districts worked.	Who, when etc.? No details.
	Respondent No. 1 went to the constituency by air, railway and motor.	When did he go for election purposes and when on duty?
	Several posters etc. were distributed	It is alleged that full expenses are not shown. What is omitted? Which posters?
	Some fictitious receipts are filed	Which are they? By whom were they given? What is wrong in them?
	Expenses of lac, wax, matches	No details. Some expenses are shown. What is omitted?
27	Shamianas	Full expenses are alleged not to have been shown. What is omitted?
	Expense of a large number of public meetings	Where and when were they held and who had convened them? Only loud speakers are mentioned in Annexure 'A'.
	Expenses have exceeded the permissible limit. . . .	By how much approximately
6 (b)	Besides those mentioned in Annexure 'B', a large number of Government servants worked.	Who, when, what work?
6 (c)	A large number of voters were fed	Names of them.
6 (d)	Undue influence and threat	No particulars at all.
6 (e)	Agents and workers gave out that Muslims must vote for respondent No. 1.	Which of the agents and workers, where and when?
6 (f)	Attempts to rouse up communal sentiments	No particulars given.
6 (g)	Offer of bribe to petitioner from Rs. 10,000 to Rs. 30,000 through persons named.	Which of them offered, what amount and when? This must be within the petitioner's personal knowledge.

<i>Paragraph</i>	<i>Allegation</i>	<i>Particulars wanting</i>
7	A large number of voters impersonated	No particulars.
11	Return of expenses false	This is only a repetition of paragraph 6 (a).
12	Organised appeal by heads of Muslim community	No particulars.
13	Expenses incurred by the Congress party	No particulars.

It will thus be seen that vague allegations have been made with a view to make a fishing inquiry and introduce any kind of evidence that may be available at the time of hearing. It is not possible for the elected candidate to be prepared to meet such allegations. As observed in Belfast Borough Western Division Case (1886, 4 O'M & H. 105 at page 106), "particulars which are fishing on grossly insufficient information will be struck out at the trial".

It is a sound principle of natural justice that the success of a candidate at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. The power to interfere is derived from the Statute, and this Tribunal has no inherent powers beyond those expressly conferred upon it by the Act, and the field of those powers is limited to the specified matters conferred by it. As observed in Abraham's New York Election Law (at p. 263)

"An election contest is not an action at law or a suit in equity, but is purely a statutory proceeding unknown to the common law. The court possesses no common law powers..... Therefore as a general rule, a strict observance of the statute is required so far as regards the steps necessary to give jurisdiction.

It is this principle which underlies Section 85 of the Act, which enjoins the Election Commission to summarily dismiss an election petition which does not comply with the provisions of Sections 81 and 83 of the Act which lay down how an election petition should be presented, what its contents should be and what should accompany it. No discretion is given to the Election Commission to condone the non-compliance with these provisions.

At a late stage, the petitioner, without being called upon, put in what he calls a replication, supplying some of the particulars in the form of lists, and at the fag end of his arguments Shri Ghosh put in an application requesting us to allow the petitioner "to treat the lists accompanying the replication with further and better particulars in regard to matters referred to in the petition and the accompanying lists (annexures) as part of his original petition and accompaniments thereof for the purpose of ensuring a fair and effectual trial of the petition".

This is really an application for the amendment of the petition made long after the time allowed by Rule 119 for the presentation of the election petition has elapsed. We have held in Election Petition No. 256 of 1952 (Radhey Shyam Sharma v. Chandra Bhanu Gupta and others decided on 21st March 1953) that we have no power to allow such an amendment, and it is not necessary to repeat all the reasons given by us there. Before we delivered our judgment in that case, we had fully heard the arguments in this case also and did take them into consideration. In addition, we may here quote with advantage from pages 301 and 302 of Abraham's New York Election Law, which is similar to ours:-

"The time element for the filing of petitions, certificates and the institution of proceedings is governed by statute. All amendments and corrections addressed to a filed petition or certificate must be made within the time as outlined by statute. There are no exclusive statutes present in the election law relating to amendment and correction. The Supreme Court has no statutory power to permit the Board of Elections to accept for filing, amended or corrected election petitions (as distinguished from judicial petitions) where the time to do so has expired by statute. But, valid correcting affidavits were permitted where the time to amend and correct election petitions had not expired by statute."

"A motion to correct the affidavit of the subscribing witness, where it appeared that the witness inadvertently misstated the true date of his last registration was denied, since this proceeding was not brought within the time allowed by statute for the filing of petitions. So, an

attempt to file supplemental affidavits to correct a petition will not be accepted when not filed on or before the last day provided for by statute for the filing of petitions".

Even if we had the power, we would not have allowed such a wholesale amendment, which would go to the very root of the provisions of Section 83(2). It is only when there are lists accompanying the petition and they contain some particulars required by Section 83(2), that we can allow those particulars to be amended, or order such further and better particulars to be furnished for the purpose of ensuring a fair and effectual trial of the petition. This was pointed out clearly by the Commissioner's in the Saharanpur case (Hammond's Election Cases p. 621 at p. 623). They say:—

"It is claimed that rule 35 (sub-section 2 of section 90) directs the Commissioners to enquire into petitions "as nearly as may be in accordance with procedure applicable under the Civil Procedure Code, 1908, to the trial of suits", and that we ought therefore to allow the petitioner at this stage to amend his petition and supply the missing particulars now. The petitioner's counsel professes to rely on order 6, rule 17, Civil Procedure Code. We hold, however, that rule 35 (sub-section 2 of section 90) only makes the Civil Procedure Code applicable to the conduct of the enquiry and not to the petition. In the case of an ordinary civil suit the trial court is empowered to accept, reject, or at any rate amend the plaint. This is not so with an election petition, which under rule 30 (section 81) can be accepted only by the Governor (Election Commission) within a limited period of 14 days from the date of publication of the result of the election. Further, there is no provision anywhere in the Act or the rules for the amendment of a petition. Indeed, any such amendment appears contrary to the whole tenor and spirit of the rules. The short time limit permitted and the insistence in rule 31 (Section 83) on the furnishing at once of the full particulars are evidently intended to insure that the returned candidate shall without any delay be informed of the exact nature of the case against him and of the charges which he will have to meet. To allow amendments and additions would be to defeat this very salutary provision."

We have given our reasons at length in our judgment in Radhey Shyam's case why we refer this view to that of the Bombay High Court in Special Civil Appn No. 2017 of 1952, decided on 19th December, 1952. There have undoubtedly been conflicting decisions on this point by different Election Tribunals in India, and after considering all those referred to in the course of the learned and helpful arguments, we see no reason to alter the view expressed by us in Radhey Shyam's case, namely, that when the time for presentation of an election petition allowed by Rule 119 has passed, we have no power to allow the petitioner to amend his petition by giving new lists, or adding particulars to the lists beyond what is conferred on us by Section 83(3) of Act. It says:—

"The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition."

To borrow the words from the case of Muhammad Siddiqui v. Kh. Sir Nazimuddin (Doabia's Indian Election Cases Vol. II p. 322 at p. 327) "when only vague allegations of corruption are made in the original petition, to allow specific particulars of these allegations to be furnished after the expiry of the prescribed period of limitation would in effect amount to the admission of a new petition which was time barred, and would involve the adoption of a procedure which the law does not contemplate". Section 83(3) contemplates that the particulars given in the list accompanying an election petition, if any, may be amplified, but vague allegations without particulars may not be developed into specific charges after the period of limitation prescribed by Rule 119.

For the same reason we cannot now allow the petitioner to amend the verification of the plaint by including in it paragraphs 13, 14 and 15, which were omitted through oversight. Paragraphs 14 and 15 are immaterial, and even if verified, the allegations in paragraph 13 which amount to a corrupt practice cannot be considered for want of a list giving the necessary particulars.

Shri Ghosh urged with some force that all this had to be considered by the Election Commission, and if the provisions of Section 83 had not been complied with the petition should have been dismissed under Section 85. It is true that this should have been done, but if it was not, then this Tribunal has the power to do so under Section 90(4). Shri Ghosh rightly points out that that section gives the Tribunal a discretion and he wants us to exercise our discretion in favour of hearing and deciding the case on merits and not to throttle it on a technical ground. Here again our discretion is, in our opinion, limited by article 329(b) of the Constitution and Section 80 of the Act. In the absence of an election petition presented in accordance with the provisions of Part VI of the Act, no election can be called in question. While the Election Commission is bound to dismiss the petition wholly, if any of the provisions of Sections 81, 83 or 117 are not complied with, when the petition comes before the Tribunal, it may dismiss the petition wholly, or in its discretion try on merits that part of it which fulfils the requirements of the provisions of Part VI of the Act. Election Petitions Nos. 199 and 269 of 1952 (reported on pages 125 and 173 of the Gazette of India Extraordinary, Part I, dated 17th and 20th January 1953 respectively) were wholly dismissed by the Election Tribunals for want of duly signed and verified lists, though the petitions contained some other grounds besides corrupt and illegal practices, which did not require any lists or particulars. But we think it fair that only those grounds should be shut out which cannot be urged owing to lack of the necessary lists and in exercise of the discretion conferred upon us by Section (4), we allow the petition to be proceeded with on the remaining grounds.

We have already scrutinized the petition from this point of view and found that the only allegations of corrupt practices for which verified lists are furnished are those referred to in Annexures 'A' and 'B'. The allegations in Annexure 'C' are not only vague but do not disclose any corrupt practice. They all mention appeals by Muslims to the members of their community to vote for the Congress. Had they appealed to Muslims to vote for Muslim candidates, (the petitioner himself being one of them), on the ground of religion, it would have amounted to a corrupt practice under Section 124(5) of the Act. The injunctions and appeals referred to in paragraphs 6(e) and 6(f) and Annexure 'C' are for supporting the Congress, which had put forward candidates from various communities. In fact respondent No. 1 does not belong to the community of those who issued the appeals, and such appeals can in no sense be regarded as a corrupt practice, or as a valid ground to challenge the election.

S'ri Dar, on behalf of respondent No. 1, has contended that even Annexures 'A' and 'B' are not self-contained and by themselves they cannot make any sense, and must be left out of consideration. This is applicable only to Annexure 'B', which merely mentions the names of twelve Government servants without giving any particulars whatsoever as to what they did, when and how they did it, and what respondent No. 1 had to do with them. It is true that there is a vague allegation in paragraph 6(b) that all these government servants "remained in Barcilly in furtherance of the prospects of respondent No. 1's election and actively participated in canvassing and influencing the voters". As observed by Willes, J., in Westbury (1869, 10, & H. at p. 56) "canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to vote for the adversary". Using influence also may be for either of the purposes. There is nothing either in paragraph 6(b) of the petition or in Annexure 'B' which can give the slightest indication as to whom each of the twelve government servants asked or influenced, where and when and whether to vote or not to vote. The date and place of the commission of each corrupt practice must be stated, if the requirements of Section 83(2) are to be complied with. But what is stated in paragraph 6(b) of the petition is the "concise statement of material facts on which the petitioner relies", which an election petition has to contain under Section 83(1) of the Act. To repeat the words of Wills, J., in the case of Worcester cited above, everything is left blank, and to allow the petitioner "to attempt to 'whitewash' out some possible material from which the blank may be filled up is an abuse of procedure." The list required by Section 83(2) to accompany the petition must contain full particulars of the alleged corrupt or illegal practice, including the date and place of the commission of each such practice, which are wholly lacking in Annexure 'B'. In fact Annexure 'B' contains no allegation whatsoever, but merely enumerates twelve names. Had some particulars at least been given in them, further particulars could have been called for under Section 83(3). But as it stands, no sense can be made out of it, and although we have held it to be duly signed and verified, we find that it contains no allegations which can go to trial. This annexure and paragraph 6(b) of the petition must, therefore, be left out of consideration.

This cannot be predicated of Annexure 'A'. It fully describes the corruption and says that loud speakers were installed at meetings at twenty-one named places and their expenses are not shown in the return of election expenses. What is lacking in these particulars is that the date and time of the meetings, and the names of those who convened the meetings and hired the loud speakers, and of those who supplied them and paid for them, are not given. Under Section 83(3) of the Act we will call upon the petitioner to remove this lacuna by supplying these particulars. In fact some of these particulars are supplied by the petitioner in his replication, but as we have not allowed him to put in the whole replication, he should now put in separately the required further particulars of Annexure 'A'. This is the only corrupt practice which can go to trial.

There remain other complaints made by the petitioner in paragraphs 7 and 8 of the petition. They are:—

- (1) The ballot boxes were such as could be opened without tampering with the seals.
- (2) In seven polling stations named in paragraph 7 ballot boxes were sealed before the time fixed and in the absence of candidates or their agents, and the representation of the agents to seal the ballot boxes in their presence was turned down.
- (3) Seventy ballot boxes mentioned in Annexure 'D' had either the outer symbols removed or had different outer and inner symbols.

These contravene respectively the provisions of Rules 21(1), 32 and 19(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. This non-compliance with the provisions of the Rules is a valid ground for declaring the election void under Section 100 sub-section 2(c) of the Act, if it is proved that the result of the election has been materially affected thereby. Shri Dar contends that there is no such allegation in the petition. We, however, find that paragraph 7 of the petition begins by stating that "in the conduct of elections there have been several material irregularities affecting the election and the non-compliance of the mandatory provisions relating to the elections". Then such irregularities are set out in paragraph 7 and 8. We assume that the first sentence in paragraph 7 is intended to apply to paragraph 8 also; and anyhow that will have to be an issue for decision.

So our findings are:—

Issue Nos. 1 and 2.—In the negative.

Issue No. 3.—In the affirmative.

Issue No. 4.—Paragraphs 1 to 12 of the petition and the Annexures 'A' and 'B' are duly verified.

Issue No. 5.—All the allegations in the petition regarding corrupt practices, excepting those contained in Annexure 'A' are to be left out of consideration, and the trial should proceed only with regard to the allegations in paragraphs 7 and 8 of the petition and in Annexure 'A'.

Further issues will be framed regarding these allegations and will be set down for hearing, and the petitioner will be called upon to supply further particulars of the allegations in Annexure 'A' as stated above.

It is really surprising how a petition of such importance was drafted so carelessly, regardless of the mandatory and clear provisions of sections 80 and 83 of the Act and O. VI R. 15 of the Code. We must, however, express our appreciation of the clarity and thoroughness of the arguments advanced before us by the learned counsel on both the sides.

(Sd.) N. S. LOKUR, *Chairman.*

(Sd.) S. N. MITRA, *Member.*

(Sd.) AZIZUI HAQUE FAKHRUDDIN, *Member.*

LUCKNOW;
The 24th March, 1953.

NOTE.—It is noticed that when purporting to quote Section 83 of the Act the provisions of Rule 83 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, have been wrongly typed. We, therefore, correct it by substituting the following therefor:—

- (1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the

petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

- (2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(Sd.) N. S. LOKUR, Chairman.

(Sd.) S. N. MITRA, Member.

(Sd.) AZIZUL HAQUE FAKHRUDDIN, Member

LUCKNOW;

The 18th April, 1953.

BEFORE THE ELECTION TRIBUNAL AT LUCKNOW

ELECTION PETITION NO. 209 OF 1952

Sri N. S. Lokur—Chairman.

Sri Sarat Chandra Ray Chaudhury—Member.

Sri Azizul Haque Fakhruddin—Member

Final judgment in Election Petition No. 209 of 1952 in continuation of the preliminary judgment delivered by the Tribunal on 24th March, 1953.

Respondent No. 1's replies to the petitioner's allegations which have now remained for consideration are contained in paragraphs 6(xiii), 6(xiv), 7, 8 and 13(1). He says, in effect, that whatever expenditure was incurred on loud speakers has been shown in his return of expenses, that the prescribed maximum limit of election expenses was not exceeded, that ballot boxes were not sealed before the time fixed, that at one station only sealing of boxes was started when the petitioner's agent was not present, that the presiding officer has given his reasons for doing so, that the ballot boxes used were standardized boxes in use all over the State approved by the Commission, that when sealed they could not be opened without damaging the seals, that only eleven out of the seventy boxes mentioned in Annexure 'D' of the petition had to be opened to ascertain the inner symbols, that it was so done with the consent of all those who were concerned, including the petitioner, that it is not true that in the case of four boxes the outer symbols differed from the inner symbols, and that even if any irregularity is proved, it has not materially affected the result of the election.

On these pleadings the following additional issues were framed:—

6. (a) Were the ballot boxes such as could be opened without tampering with the seals? and

(b) if so, has the result of the election been materially affected thereby?

7. (a) Is it proved that the expenses of loud speakers and announcements at the meetings in the twentyone places mentioned in Annexure 'A' are not shown in Respondent No. 1's return of election expenses? and

(b) if so, has the result of the election been materially affected thereby?

(8) If these expenses be added, does the total exceed Rs. 8,000?

9. (a) Were the ballot boxes at the seven polling stations named in paragraph 7 of the petition sealed before the time fixed and in the absence of the candidates or their agents? and

(b) if so, has the result of the election been materially affected thereby?

10. (a) Were the seventy ballot boxes mentioned in Annexure 'D' tampered with and were the outer and inner symbols different in four of them? and

(b) if so, has the result of the election been materially affected thereby?

11. What orders?

Our findings on these issues are:—

6.(a) The ballot boxes can be opened without any visible damage to the paper seal, but not without snapping the string of the outer seal.

(b) In the negative.

7. (a) Some of the meetings are fictitious, some were not for respondent No. 1 and at some there were no loudspeakers. Respondent No. 1 has shown in his return of election expenses all the amounts paid by him for the hire of the loud speakers used by him.

(b) In the negative.

8. In the negative.

9. (a) At only one polling station.

(b) In the negative.

10. (a) In the negative on both the parts.

(b) In the negative.

11. As ordered below.

REASONS

Issues Nos. 6(a) and 6(b).—Rule 21(1) of the Election Rules of 1951 provides that every ballot box shall be of such design and colour as have been previously approved of by the Election Commission, and that it shall be so constructed that ballot papers can be introduced therein but cannot be withdrawn therefrom without the box being unlocked and the seals being broken. At the election in question the ballot boxes used were of what is known as the "Godrej" type manufactured by Messrs. Godrej and Boyce Manufacturing Co. Ltd. This type has been approved of by the Election Commission, but in paragraph 7 of his application the petitioner complains that "they were such as could be opened without tampering with the seals". In order to demonstrate this he got ten such ballot boxes produced by Syed Kadiri (PW 12) and summoned three witnesses who claimed to be able to give the demonstration. Three out of the ten boxes were selected and were sealed and closed in the presence of the Tribunal and the parties and their advocates exactly in accordance with the instructions given by the Company in Ex. P6 and by the Government of Uttar Pradesh in Ex. P7 Jang Bahadur Singh (PW 13) made the first attempt. He succeeded in opening the lid of the box (Ex. P9), but in doing so, the string with which the button and the window cover were secured was snapped, retaining intact the seal at the ends of the string and there was a slight damage to the paper seal, the hole made in it being easily visible. The technique used by him was simple. He easily removed the wire and after raising up the window cover, he dexterously and slowly manipulated with the paper seal covering the window from outside so as to give room for the insertion of a hooked needle. With that needle he picked out the string and holding it pulled, he turned the button anti-clockwise. But before it was sufficiently turned, the string that tied it to the window cover was snapped. The hole made in the paper seal when the hooked needle was inserted was also visible.

The second attempt by Jay Sing (PW 14), a student 19 years old, was more successful. He wanted that the seal on the loose ends of the thread should be at a distance from the knot. In that case, he could have turned the button easily by loosening the knot. But this was not allowed. The result was that the string snapped when he tried to turn the button after pulling the inner string. The technique adopted by him was the same, but he was very careful in inserting his hooked needle into the window to pick out the inner string and after opening the lid, he re-adjusted the paper seal so that no damage to it was visible (Ex. P10).

After this demonstration, Shri Ghosh, the learned advocate for the petitioner who had put a third demonstrator, C. D. Senani (PW 15), into the witness box, gave him up and said that Jay Sing's demonstration was enough to serve his purpose. There is a good deal of force in his contention that the box is proved to be vulnerable though the outer string was snapped when Jay Sing turned the button and opened the box. The instruction in Rule 68(a) on page 41 of Ex. P7, which deals with the sealing of Godrej type boxes after the votes are cast and the polling is over, says:—

"See that your seal on the thread securing the window cover to slit-controlling device is intact. Even if it is not intact, open the window cover by breaking the thread and see that the paper seal is intact. Show the polling agents that the paper seal is intact. If it is not,

the polling will have to be held again under the Returning Officer's order. If it is in tact, turn the slit-controlling device to the right until the slit is fully closed."

From this Shri Ghosh argues that the outer string or thread is of secondary importance and even if it is damaged, the box would be deemed to be untampered, if the paper seal be in tact. It was, therefore, possible for an elector like Jay Sing entering the polling compartment to open any ballot box without damaging the paper seal, remove the ballot papers in it and add them to any other ballot box similarly opened by him though he might snap the outer strings in doing so. In that case the polling officer would ignore the string and close the slit, and seal it on the assumption that the box had not been tampered with as the paper seal was in tact.

This interpretation of the instruction is not correct. In fact what it says is that "the seal on the thread" may not be in tact, and not that the thread may be snapped. Rule 21(5) of the Election Rules, 1951, gives as much importance to the thread as to the seals. It says:—

"The paper seal or the other seals used in a ballot box shall be affixed in such manner that it shall not be possible to open the box again without breaking such paper seal or other seals or any thread on which the other seals have been affixed."

It seems that the instruction is intended to meet a case where some ignorant elector might touch the outer seal accidentally and damage it. But no elector would be allowed to stay in the polling compartment long enough to open any box in the manner in which Jay Sing did. He took more than fifteen minutes to do so.

In the same way before the commencement of the counting, some of the boxes are likely to have their seals on the thread damaged in transit and it would be ignored if the paper seal was in tact. Ex. p. 7 does not contain the instructions about the counting of votes. We obtained the book-let containing them from the Election Office and have marked it as Ex. "A". On page 7 of the book-let there is a similar instruction which says:—

"Please note that damage to the seal which shall be placed through the rotating knob and window cover in Godrej type boxes..... shall not amount to tampering so long as the paper seals below the window are in tact."

This supports the suggestion made on behalf of the petitioner that the boxes are capable of being tampered with without any damage to the paper seals, and yet be treated as untampered at the time of the counting of votes.

This would lead to the suggestion that the boxes were capable of being tampered with, so long as the paper seals were left in tact. But it is stated by the Assistant Returning Officer (RW 1) that the votes were to be counted at the Tahsil headquarters, that the boxes were under the Tahsil Police Guards in the barracks before they were counted, that after they were brought, they were in his charge and that it is not true that they were in the charge of anybody else. Thus nobody was allowed to have any access to the boxes in the interval.

After all, the instruction is there, and if anybody had the facility, he could damage the seal on the thread, loosen or untie the knot of the thread, open the box without damaging the paper seal and re-tie or re-adjust the string as before, and yet in virtue of the instruction, the box would be taken not to have been tampered with, as the paper seal was in tact. We consider this to be far from satisfactory. This can be easily avoided by eliminating the inner string altogether. It is intended to facilitate pulling the inside projection located mid-way between the window and the box handle, which is necessary for the turning of the button. But that equally makes it easy to tamper with the box as demonstrated by Jay Sing. The projection can be pulled by inserting a finger through the window, and then the button turned. In fact this is stated in a foot-note in the Company's instructions (Ex. P6) where it says:—

"In case the string in the window is broken or missing, the box can still be opened by pulling, instead of the string, an inside projection located mid-way between the window and the box handle. Feel for the projection and pull it towards the window, following other instructions given above"

In fact we found it easier to pull the projection with a finger than with the string. The string is thus a superfluity which can, be safely dispensed with. It will then be impossible for any one to insert a finger through the window for pulling the projection without damaging the paper seal covering the window. This is only a suggestion which may be taken into consideration by the Election Commission.

The most that can be said to have been established by Jay Sing's demonstration is that the Godrej type of ballot boxes cannot be said to be in exact compliance with the requirements of Rule 21 of the Election Rules of 1951. But this is not enough. Under Section 100(2)(c) of the Act, the petitioner must further prove that by reason of this "non-compliance with the provisions of Rule 21, "the result of the election has been materially affected". There is no such definite allegation nor any attempt to prove it. It is not even suggested that the outer string of any of the ballot boxes was found at the time of the counting of votes to have been snapped or otherwise damaged. If so, it must be assumed that none of the boxes had been tampered with. But Sri Ghosh has urged on behalf of the petitioner that in deciding whether the result of an election has been materially affected or not, we should apply the test laid down in the Islington West Division Case (*Medhurst v Lough and Gasquet*, 5 O.M. & H. 120), where Kennedy J., said:—

"If the court sees that the effect of the transgression of law was such that the election was not really conducted in the manner prescribed under the existing election laws, or it is open to reasonable doubt whether the transgression may not have affected the result of the election, and it is uncertain whether the candidate who has been returned has duly been elected by the majority of the persons who are entitled to vote in accordance with the law in force relating to elections, the court is then bound to declare the election void."

This only indicates the standard of proof required, but the same learned judge observed in the passage preceding the above, as follows:—

"An election ought not to be held void by reason of transgression of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election where the court is satisfied that the election was notwithstanding those transgressions, an election really in substance conducted under the existing election laws that is the success of one candidate over the other was not and could not have been affected by those transgressions."

Sri Ghosh also referred to *Woodward v. Sarsons* (L.R. 10 C.P. 748), but it lays down no different principle. As observed by Baron Braham in *Durham (County) Northern Division Case No. 2* (2 O.M. & H. 152) at p. 157, it is clear that it is no part of the duty of the Tribunal to enter into a kind of scrutiny to see whether possibly, or even probably, or as a matter of conclusion from the evidence, the result of election would have been different. Section 100, sub-section 2(c) of the Indian Act is more positive and emphatic in this respect than Section 13 of the English Ballot Act of 1872 or 516(3) of the present English Representation of the People Act of 1949. Under the English law, if non-compliance with any of the provisions of the Rules is proved, the onus lies on the respondent to show that it did not affect the result of the election. Whereas under Section 100 (2)(c) of the Indian Act, even though the petitioner succeeds in proving non-compliance with rules, the onus still remains on him to prove that it has materially affected the result of the election, that is to say, it has caused the returned candidate to obtain a majority of votes. It is not enough to show that the result of the election might have been affected. As Baron Martin said in the *Warrington Case* (*Crozier v. Rylands*, 1 O.M. and H. 42) "a Judge to upset an election ought to be satisfied beyond all doubt that the election was void; the return of a member is a serious matter and not to be lightly set aside".

Hence our findings on issues Nos. 6(a) and 6(b) are that the ballot boxes can be opened without any visible damage to the paper seal, but not without snapping the string of the outer seal, but the result of the election has not been materially affected by this defect in the ballot boxes.

Issues Nos. 7(a), 7(b) and 8.—In paragraph 6(a) of his application he petitioner says—

"A large number of public meetings in furtherance of the prospects of respondent No. 1's election were held. Expenses in this connection have not been shown with a view to hide the fact of having spent in excess of the maximum fixed under the Rules and further with a view to hide the illegal expenses. Further particulars are mentioned in Annexure 'A'."

This Annexure 'A' purports to give a "list of the public meetings in which loud speaker announcements were made and also installed, but not shown in the expenses return". The list contains twentyone names of the localities where meetings are said to have been held, and as it gave no details, the petitioner was called upon, under S. 83(3) of the Act, to supply as full a statement as possible of the following particulars of his allegations in the Annexure:—

- (1) The date and time of each meeting;
- (2) The name of the person or the names of the persons who convened these meetings and who hired the loud speakers;
- (3) The names and addresses of those who supplied loud speakers there and the amounts charged by them; and
- (4) The name or names of the person or persons who paid those charges.

Accordingly, the petitioner has put in a well-arranged statement in a tabular form, giving detailed particulars of thirty meetings said to have been held in the twentyone localities mentioned in Annexure 'A'. In his written reply, respondent No. 1 has admitted fourteen out of them, namely those mentioned in the petitioner's tabular statement at serial Nos. 1, 2, 3, 6(2), 9, 13, 14(1), 14(3), 14(4), 14(5), 15, 16, 18 and 21. He has admitted only the dates and the places of these fourteen meetings, but not the time and other details. He has also admitted that loud speakers were used at all those meetings 'except at the one at serial No. 21, which was a meeting of workers only. He has also pointed out that out of the 14 meetings, those at serial Nos. 13, 14(1), 14(3), 14(4), 14(5), 15 and 16 were Congress meetings, but not for or on behalf of himself, and that the meeting at serial No. 14(1) was not an election meeting at all on behalf of anybody.

What we have to find out in connection with Annexure 'A' is whether in his return of election expenses respondent No. 1 should have but has not included all the amounts said to have been spent by him for using or installing loud speakers in the alleged public meetings at the twentyone places mentioned in it. These amounts are mentioned by the petitioner in column 7 of his tabular statement. The expenses which have been shown in column 9 as remuneration to person or persons who made announcements of the meetings on loud speakers and in column 14 as charges paid for the conveyance used for announcing the meetings on loud speakers have to be left out of consideration as they were incurred outside the meetings and not in the meetings as mentioned in Annexure 'A'. This has already been ordered below Application No. 41 of 1953 and a copy of the order is attached to this judgment as Appendix 'A'.

Column 8 of the petitioner's tabular statement mentions the names and addresses of the person or persons who paid the charges of the loud speakers. For the hire of loud speakers for the meetings mentioned at serial Nos. 1 to 3 and 9 to 12, respondent No. 1 is stated to have paid the charges through some one. But for the remaining meetings the charges are shown as having been paid by the Congress Parliamentary Board or the City Congress Committee of Bareilly or Ram Murti or S. P. Bakshi. It is not stated that they paid them for or on behalf of or at the instance of respondent No. 1. This distinction is scrupulously observed by the petitioner in the statement. Thus for the loudspeakers at the two meetings at serial No 4, column 8 shows that the charges were paid by "G. B. Pant, through City Congress, Barcilly". At some others they have been shown as paid by "G. B. Pant through Ram Murti", or "G. B. Pant through C. D. Pande". Hence the omission to mention "G. B. Pant" at serial Nos. 8 and 13 to 21 was deliberate and not through oversight. This has been already ordered below Application No. 41 of 1953. At a late stage an application (No. 51 of 1953) was made by the petitioner for amending the description in column 8 at serial Nos. 8 and 13 to 21 by adding the words "G. B. Pant, through", but as it was an afterthought, the application was rejected. Hence we have to consider only the meetings at serial Nos. 1 to 7 and 9 to 12.

Column 6 of the tabular statement gives the names of the person or persons who supplied the loud speakers. At the meeting at serial No. 4(1), Singh Radio is said to have supplied the loud speakers. At all the other meetings which we have to consider, loud speakers are said to have been supplied either by Khanna Radio or by Electric House. In his written reply to the tabular statement respondent Nos. 1 says:—

"No loud speaker of Khanna Radio was used as alleged by petitioner except in a meeting which was held on 20th December 1951 and which is not entered in the particulars of the petitioner".

To substantiate the correctness of his tabular statement, the petitioner examined K. M. Khanna (Ex. PW 1), the proprietor of Khanna Radio and

Electric House at Bareilly. He said that he received Rs. 741-14-0 in all from the General Secretary, City Congress Committee, for the supply of loud speakers and amplifiers to him during the months of December 1951 and January 1952, and received only Rs. 30 from respondent No. 1 for the hire of a loud speaker used at the meeting in Moti Park between 6-30 and 8 P.M. on 20th December 1951. As pointed out in respondent No. 1's reply, the petitioner's tabular statement does not mention this meeting at all. Khanna further says that Satish Chandra was a candidate for Parliamentary election and that he received some amounts from him also for the hire of loud speakers. This is borne out by Satish Chandra's return of election expenses produced as Ex. P. 17. Khanna was allowed to be treated as a hostile witness at the request of the learned Advocate for the petitioner, but nothing useful to the petitioner was elicited from him.

The petitioner claims in his deposition (P.W. 9) to have attended all the meetings. He says that Khanna gave him the information about the various items shown in his tabular statement, that Khanna showed him the orders and receipts and that "all the information about the loud speaker given in Annexure 'A' is based on the information given by Khanna". But Khanna denies this and says that when the petitioner approached him, he told him that he was not going to disclose the accounts since he was a businessman and that he might do what he liked. In his cross-examination the petitioner says that he made a note of what he found in Khanna's books in March 1953, but strangely enough, he has not preserved that note. He adds that Khanna told him that Ram Murti had paid Rs. 500 and C. D. Pande Rs. 400 or Rs. 500 and yet he did not mention those amounts as he had no "documentary evidence". He says that the original account book of Khanna is kept back and the one produced by him is a fake. But Khanna has produced his book of counterfoils of the receipts which cannot be impeached. He received two sums of Rs. 500 and Rs. 200, and Satish Chandra's return of expenses includes Rs. 500 and Rs. 170 out of Rs. 200, while Rs. 30 are shown in the return of respondent No. 1. Thus there is no suppression of any amount paid to Khanna for the hire of loud speakers for him.

The petitioner examined one witness Syed Hamid Ali (P.W. 8) who claims to have been in the service of Khanna Radio and Electric House for doing the work of installing loud speakers at Congress meetings. He says that they were all hired by Ram Murti and Darbarilal who were working for respondent No. 1. The witness is not at all reliable. He says that he had no talk with the petitioner about this. He says that Khanna had engaged him from 1st January 1951 on Rs. 80 per month, that he served him only for one month and was paid only Rs. 26, and that though he asked him for balance, it was not paid. He does not remember which meetings were held in December and which in January. He never passed any receipts for the loud speakers entrusted to him and does not know who paid the hire of the tongas in which they were carried. He could not even point out Ram Murti, who was then sitting in Court. It is strange that Khanna was not asked whether he had not engaged this witness for carrying and installing loud speakers, and even though Darbarilal (R.W. 11) was examined for respondent No. 1 and was cross-examined at length, he was not asked a single question about this Syed Hamid Ali. Moreover, even the evidence of this witness is vague and does not help in proving the entries in the petitioner's tabular statement. It must be regarded as not only unreliable but also worthless.

Singh Radio is said to have supplied a loud speaker installed at the meeting at Mohalla Muluckpur on 24th December 1951 (serial No. 4), but no witness from that firm has been examined.

The rest of the oral evidence adduced by the petitioner on this point is vague and useless. N. D. Sharma (P.W. 2) says that some meetings were held on behalf of Pandit Pant and loud speakers were installed. He knows no other details except that at one meeting the Nawab of Chhatari spoke and that at another respondent No. 1 and a Mohammedan, whose name he does not know, spoke. He does not remember who presided at those meetings and who else addressed them. He is an officer in the Agriculture department, has been suspended and is being prosecuted for embezzlement. He is acquitted in one case and another is still pending against him.

Raghunandan Prasad (P.W. 13), who is respondent No. 9, Syed Munawar Ali (P.W. 4), Chet Ram Gangwar (P.W. 5) and Abhey Kumar (P.W. 10) are equally vague. All they say is that they attended some public meetings and that loud speakers had been installed at them. They have no idea as to who had convened those meetings, who had installed the loud-speakers or who paid their hire charges. Shiv Pratap Bakshi (P.W. 6) says that he attended only one meeting of the Congress workers on 19th December 1951.

The petitioner had called upon the General Secretary of the Congress Committee at Bareilly to produce certain documents. Harish Chandra Verma (R.W. 7), the Secretary, had brought them. The account book and the Bank Savings Pass book brought by him were seen by the learned Advocate for the petitioner, but they were not found useful and were not got produced.

Not only has the petitioner failed to prove the correctness of the entries in his tabular statement, but their falsity is established beyond doubt. Respondent No. 1's return of his election expenses is produced as Ex. R. 14 Part 'F' of that return which relates to items of miscellaneous expenses, including Rs. 816-4-0 for loud speakers. This is more than 10 per cent. of the maximum amount of election expenses allowed by Rule 117 of the Election Rules of 1951 read with Schedule V, namely Rs. 8,000. This is quite a reasonable percentage to spend on loud speakers alone. The petitioner's return (Ex. P. 15) shows that he spent only Rs. 98-13-0. Respondent No. 1's return contains vouchers, bills etc. to show how his amount of Rs. 816-4-0 is made up. He hired loud speakers from six different firms and paid them as follows:—

Rate	Firm	Voucher No.	Amount paid Rs. As. P
1. 13-1-1953	Lakshmi Narayan	F4	25 0 0
2. 24-1-1952	Amritsar Electric Store	F11	10 4 0
3. 27-2-1952	Khanna Radio	F16	30 0 0
4. 27-2-1952	Singh Radio	F17	350 0 0
5. 29-2-1952	Lakshmi Narayan	F18	250 0 0
6. 5-3-1952	P. Mehra & Co.	F19	85 0 0
7. 4-4-1952	Sharma Sound Service	F20	66 0 0
TOTAL			816 4 0

Admittedly, the election propaganda was started on the 18th or 19th of December 1951, even according to the petitioner's tabular statement. The dates on which the six firms supplied loud speakers to respondent No. 1 and the number of loud speakers supplied on each day are shown in Appendix 'B', which is prepared from the bills attached to the vouchers in Ex. R. 14. The undated bills F. 11 and F. 19 may possibly have been for the days left blank in Appendix 'B'. Thus it will be seen that respondent No. 1 had one or more loud speakers throughout the period of the election propaganda from 18th December, 1951 to 30th January 1952. Only on one day, 20th December, 1951, did he hire two loud speakers from Khanna Radio though he had already one loud speaker from Lakshmi Narayan. This is borne out by Khanna's evidence (P.W. 1) and the receipts Exs. R1, R3 and R4 and the bills Exs. R2 and R5. But the petitioner's tabular statement shows that respondent No. 1 hired loud speakers from Khanna Radio twenty seven times, only once from Singh Radio, once from Lakshmi Narayan and once from Chicago Co., and that once he borrowed a new loud speaker from the Congress Parliamentary Board through Amolakchand Jain, for which an amount of Rs. 600 is said to have been paid. This only shows that the entries in the petitioner's tabular statement were made purely out of imagination, and it is unfortunate that he did not even see the bills and vouchers produced with respondent No. 1's return of election expenses. If he had only cared to see them, he would have at least added those amounts in his statement, and not relied so much upon Khanna Radio.

To further demonstrate the falsity of the entries in the petitioner's tabular statement, a few typical instances may be considered. It is shown therein that on 19th December 1951 respondent No. 1 addressed two meetings at Bareilly at 6 P.M., one at Moti Park and another at Mohalla Gulabnagar, and on 4th January 1951 he addressed two meetings at Bareilly at 4 P.M., one at Mohalla Biharipur and one at Mohalla Qazitola. (vide serial Nos. 14, 21, 12 and 20). But on both these days he was far away elsewhere and could not have attended any meeting at Bareilly.

Kapil Verma (R.W. 9) is a special representative of the Amrita Bazar Patrika and when respondent No. 1 started his election propaganda on 18th December 1951, he allowed Kapil Verma to travel with him. They went by a plane from Lucknow to Bareilly on that day and stayed there that day in the Circuit House. On the 19th morning respondent No. 1 addressed four workers' meetings, at which no loud speakers were used. They went to the aerodrome and flew to Rampur by the plane which left at about 4-30 P.M. From Rampur they went by car to Moradabad at 6 P.M. At the bridge on the border of

Moradabad respondent No. 1 was received by the officials, and he then addressed a "big public meeting". He went to a party and dined at the officers' mess. On the 20th he attended the Golden Jubilee celebrations of the Police Training School, received the salute at the parade, distributed prizes, attended a swimming competition and returned to Bareilly at about 7-30 P.M. There he addressed a public meeting at Moti Park. The report sent by this witness to his paper about the visit of respondent No. 1 to Moradabad is published in the issue of 21st December (Ex. R. 12). This witness was not shaken in his cross-examination and all that he said is sufficiently corroborated.

Darbari Lal (R.W. 11), who was working all along for respondent No. 1, says that the latter arrived at Bareilly by air at about 10 A.M. on 18th December 1951 and addressed workers' meetings on the morning of the 19th, but no loud speakers were used. Basta Singh (R.W. 10), who is the Aerodrome Operator at Izzatnagar Aerodrome, Bareilly, has produced his Air Traffic Register (Ex. R. 13) which shows that only one plane flew from there to Rampur at 4-15 P.M. on 19th December 1951 with four passengers, and Mukhtar Hussain (R.W. 4), the Second Officer to Thana Kotwall at Rampur, says that respondent No. 1 arrived at Rampur aerodrome at about 4 P.M. on 19th December 1951 and immediately went by car to Moradabad. He has given the time approximately, as the plane which left Izzatnagar at 4-15 could not have arrived at Rampur at 4 P.M. Respondent No. 1 reached Moradabad at 6 P.M. and was received by the Principal of the Police Training College, Ananda Swarup Gupta (R.W. 8). He gave his evidence in an impressive manner and gave the details of the movements of respondent No. 1 in the same manner as Kapil Verma. He had arranged the celebration of the Golden Jubilee of his College and could make no mistake. He gave a coffee party to respondent No. 1 at his residence at 7 P.M. on 19th December. The distance between Moradabad and Bareilly is over 52 or 54 miles and owing to road difficulties, no car could cover that distance in an hour. It is, however, proved that respondent No. 1 went by plane as far as Rampur and could not have been present in Bareilly at 6 P.M. His evidence is fully borne out by Chaturbehari Lal (R.W. 3), the stenographer to the Superintendent of Police at Moradabad. The petitioner himself has produced a poster (Ex. P. 12) issued by the General Secretary of the City Congress Committee, Bareilly, announcing that the Chief Minister would arrive at Bareilly at 5-30 P.M. on 20th December 1951 and address a public meeting at Moti Park. All this convincing evidence shows that it was physically impossible for respondent No. 1 to have addressed any meeting at Moti Park or Gulabnagar in Bareilly at 6 P.M. on 19th December, as stated at serial Nos. 14 and 21 of the petitioner's tabular statement. It is also highly improbable that he would have addressed a meeting at Azamnagar at 7 P.M. on 20th December after the huge public meeting at Moti Park that evening. It is strange that the petitioner has not mentioned this meeting in his tabular statement though he himself produced the poster announcing it (Ex. P. 12).

In rebuttal of this evidence, the petitioner got produced from the Collector's Office the Register for reservation of rooms in the Circuit House at Bareilly (Ex. P. 11). It shows that two suites of rooms were reserved for the Chief Minister on 18th, 19th and 20th. In fact he was there on the 18th, on the 19th morning and on the 20th evening and the reservation does not disprove that he had gone away to Moradabad on the 19th afternoon.

It is equally false that respondent No. 1 addressed two meetings at Mohalla Biharipur and Mohalla Qazitola on 4th January 1952 as shown at serial Nos. 12 and 20 of the petitioner's tabular statement. Darbari Lal (R.W. 11) says that no meetings were held there that day. In fact respondent No. 1 went to Kitcha that day and was received by the Superintendent of Police S. A. Thomas (R.W. 2) at 11 A.M. Thomas gave his evidence in a very straight forward way and described how he escorted him from Kitcha to Bazpur via Kela Khera, from Bazpur to Jaspur, from Jaspur to Kasipur, from Kasipur to Ramnagar and from Ramnagar to Haldwani, where they arrived at 12-45 at night. The total distance covered was 114 miles, and he says that respondent No. 1 could not have attended any meeting at Mohalla Biharipur or Mohalla Qazitola that evening. Maheshwarprasad (R.W. 5), who was the Station Officer at Baheri, says that on 4th January 1952, respondent No. 1 arrived at Bipal Thana at 7-30 or 7-45 A.M. by car, and then departed towards Haldwani after addressing a meeting. Bipal Thana is between Bareilly and Bhojipura.

In his tabular statement the petitioner has mentioned public meetings on 28th January 1952 at Bareilly at 2 P.M. at Mohalla Biharipur (serial No. 12b), at 5-30 P.M. at Mohalla Kankartola (serial No. 9), at 7 P.M. at Mohalla Zakhira (serial No. 5) and at sometime at Mohalla Shahabad (serial No. 6b). All this is false. There could have been no such meetings, with loud speakers, on that day. To his own application (Ex. R. 9) said to have been made on behalf of the

K. M. P. P., the Deputy Superintendent of Police gave a reply that "no public meeting can be held in Bareilly City on 25th, 28th and 31st January 1952". Respondent No. 1 could not, therefore, have held any public meeting on that day.

These instances are sufficient to show that the tabulated statement is based on imagination or false information. The statement of the petitioner, in his deposition (P.W. 9), that he himself attended all the meetings mentioned in Annexure 'A' is utterly false and no reliance can be placed on his tabular statement, which is not worth the paper on which it is written and even otherwise the result of the election has not been materially affected by any false return of election expenses, made subsequent to the polling.

In his return of election expenses, respondent No. 1 has shown Rs. 6,757-3-9 as the amount spent by him, which is Rs. 1,242-3-9 short of the maximum of Rs. 8,000 allowed under the Rules. So, even if the amounts paid as hire in respect of the alleged loud speakers, allowed to be taken into consideration by the order under Application No. 41, be added, the total would not come to Rs. 8,000. But we are quite satisfied that respondent No. 1 has not omitted to include in his return any amount spent by him on loud speakers.

We, therefore, find in the negative on issues Nos. 7(a), 7(b) and 8.

Issues Nos. 9(a) and 9(b).—In paragraph 7 of his application the petitioner complains that at seven polling stations, namely, Shahabad Basic Primary School, City Improvement Trust, Jatavpura Basic Primary School, Kali Barl Basic Primary School and Income-tax Office, ballot boxes were sealed before the time fixed and in the absence of the candidates or their agents, and that the representations of the agents to seal the ballot boxes in their presence were turned down. Admittedly, the sealing of the ballot boxes was notified to commence at A.M. on the day of poll (*vide Ex. P3*) and under Rule 21(2) of the Election Rules, 1951, the candidates were called upon to send their representatives "in time to watch the arrangements". In his deposition (R.W. 9) the petitioner says:—

"The Election Officer sent word to me that the ballot boxes would be sealed between 6 and 8 A.M. My agents told me that in some polling stations the ballot boxes were sealed before the arrival of my agents. Two or three of my agents even made an objection in writing to the Returning Officer, though they did not take any receipts for their applications of objection."

He mentioned the names of three of such agents, namely Syed Sadaqat Hussain, Bhagwandas and Jaleel Beg. He has not put any of these into the witness box. But he has produced the written objection given by Sadaqat Hussain to the Presiding Officer of the Polling Booth No. 14 at Shahabad Basic Primary School (Ex. P5). This is one of the seven places mentioned by the petitioner in his petition and as respondent No. 1 has admitted it in his written statement, the document was allowed to be proved and exhibited, though Sadaqat Hussain was not called. He requested in Ex. P5 that the ballot boxes should be resealed in his presence. The application was signed by two other polling agents, but their signatures have not been proved. On that application the Presiding officer made the following note—

"The work was started at 5-45 A.M. I had to complete the booths by 8 A.M. and there was no alternative. These were the instructions of the Returning Authority. Now there is no time to allow resealing because that would involve tremendous labour and work."

He also complained by Ex. P4 that the knots of some ballot boxes of Parliament were loose, but we are not concerned with those boxes. The Presiding Officer remarked thereon that the boxes had been properly sealed.

Abhey Kumar (P.W. 10) who was the polling agent for Revati Prasad, respondent No. 6, says that he went to the polling booth at the Income-tax Office at 6 A.M. but found that the ballot boxes had already been sealed. He did not make any complaint to the Officer, but claims to have spoken about it to Revati Prasad and to have been told by him that he would go and speak about it to the Polling Officer. But Revati Prasad, respondent No. 6, who is examined as P.W. 11, does not support him. He says that he went to see only three polling stations at 7 A.M. but saw nothing about any boxes having been sealed before 6 A.M. or about any such complaint having been made to him by Abhey Kumar or anyone else. The petitioner too did not make any mention of Abhey Kumar's name. We find it, therefore, difficult to believe Abhey Kumar and hold that the sealing

of the ballot boxes was commenced before 6 A.M. at the Income-tax Office polling booth; but we have to hold on the respondent's admission and the complaint in Ex. P5 that the sealing of ballot boxes at the Shahabad Basic Primary School was begun at 5-45 A.M., that is to say, fifteen minutes before the scheduled time.

This is certainly in irregularity, but there is nothing to suggest that the result of the election was materially affected thereby. As we have already pointed out, unless this is proved the election cannot be set aside. It may be that the petitioner's agent was not present at 5-45 A.M. but some others must have been present, and no one has been called to prove that there was anything wrong in the sealing of the boxes, or that any spurious papers were inserted in any of the boxes before they were sealed or seen by any one. The presumption is that the sealing and closing of the boxes was done properly, and the burden of rebutting it which lay on the petitioner has not been discharged by him.

Our findings on issues Nos. 9(a) and 9(b), therefore, are that the sealing of the ballot boxes was commenced before the time fixed only at one polling station, but it has not materially affected the result of the election.

Issues Nos. 10(a) and 10(b).—In paragraph 8 of his petition, the petitioner says that at the time of counting, it was found that over seventy ballot boxes had been tampered with inasmuch as either the outer symbols had been removed or the inner and the symbols differed, and he has mentioned four specific boxes the outer symbol on which was different from the Inner. He has given a list of these seventy boxes in Annexure 'D'. What actually was discovered and what was done are correctly described by the Assistant Returning Officer Anand Sarup (R.W. 1). The date fixed for the counting of votes was 7th February 1952. At the commencement of the counting it was noticed that some of the ballot boxes had been wrapped in gunny bags and it was not possible to find out as to which candidate of what polling station each of them belonged. The boxes had been put inside gunny bags which were sealed outside, but there were no labels on them outside the gunny bags. It was, therefore, necessary to remove the wrappers and see the labels on the boxes. So, with the written consent of the candidates or their agents (Ex. R6), the wrappers were removed by breaking the seals thereon and after ascertaining the name of the candidate to whom each box belonged, they were wrapped with the gunnies again and sealed. This was done in the presence of the Assistant Returning Officer. Then the counting was adjourned to 9th January. Before the counting was started, it was found that there were no outer symbols on some of the ballot boxes. Under the Rules, all the boxes had to be arranged candidate-wise, polling station-wise and booth-wise, according to the serial numbers of the candidates and the polling stations. This could not be done in the case of those seventy boxes as they had no outer labels of symbols to show to which of the seven candidates they related. This difficulty was pointed out to the candidates and their agents who were present, and they agreed that the boxes should be opened, the inner symbols ascertained and the boxes sealed again. Such an agreement, signed by all in the presence of the Assistant Returning Officer, was presented to him (Ex. R7). The petitioner himself is one of the signatories to it. The Assistant Returning Officer then prepared the list of the boxes which had to be opened. Out of the seventy boxes which had no outer symbol, the identity of fifty nine could be ascertained from the number of the polling station, the polling booth and the number of the candidate written on the paper seal. But in the case of eleven boxes, those numbers were indistinct and could not be deciphered. It was not that the seals had been damaged or tampered with, but the writing had been soiled, perhaps by rain water in transit. In the case of those eleven boxes, the seal was broken, the lid was lifted and the inner symbol was ascertained. They were immediately closed and sealed again as before in the presence of all, and assigned to their respective proper places. All this was openly done and nobody raised any complaint either at that time or when the counting commenced. All these details are fully given in Ex. R8. This was the case of respondent No. 1 in his written statement, and it is now virtually admitted by the petitioner in his deposition (P.W. 9). It is obvious that the outer symbols, which were pasted on the outside of the metallic boxes, perhaps with not sufficiently sticky gum, had fallen off in transit.

The petitioner's allegation that in the case of four ballot boxes the outer symbols were found to be different from the inner symbols is categorically denied by respondent No. 1 in his written statement; and yet no evidence was led by the petitioner to prove it. The Assistant Returning Officer, Anand Sarup, (R.W. 1), does not say that he found any such difference, and he was not asked a single question about it. On the other hand, he definitely states that on all the seventy boxes mentioned in Ex. R8 the outer symbols were missing. In his deposition (PW 9), the petitioner says that it was out of the seventy boxes mentioned in Annexure 'D' that four had outer symbols different

from the inner symbols. If those four boxes had any outer symbols at all, there was no need to include them in the seventy boxes whose identity had to be ascertained owing to want of outer symbols, in order to find out to whom they belonged.

The falsity of the allegation can be easily proved in another way. As stated by Anand Sarup (R.W. 1), the number of the polling station, the number of the polling booth and the number of the candidate are written on the paper seal of each box. The third item in Annexure 'D' refers to a box in polling station No. 14, polling booth No. 3 with an inner symbol of bullocks, which was the symbol assigned to respondent No. 1. The number given to respondent No. 1 was 4, as can be seen from the account of ballot papers in form No. 14 (Ex. R18). Hence on the paper seal of that box must have been written the figures 14-3-4, and it will be found from Ex. R8, that the box with these figures on the paper seal was the third from the last of those boxes which were found to have no outer symbol at all (serial No. 57).

Similarly, the 7th item in Annexure 'D' is the box with the hut as the inner symbol. Hut was the symbol of the petitioner who was assigned No. 1 (See Ex. R18). Hence the paper seal on that box would bear the numbers 14-4-1. That was the last of the boxes mentioned at serial No. 59 in Ex. R8 as one of those which had no outer symbol and whose identity was ascertained from the figures on the paper seal.

The possible suggestion is that this box, though belonging to the petitioner, had a wrong outer symbol and hence his supporters did not put their ballot papers into it. But this would lead to the absurd position that the petitioner would have no box in that polling booth, while there would be two boxes with the outer symbol Dipak. This could be avoided only if there was another box with the Dipak symbol inside and the hut symbol outside, and then only each of the candidates would have only one box in that booth. But Annexure 'D' does not mention any such box. This applies to the other three boxes also.

What may have happened is that when the outer labels on the seventy boxes came off in transit, some of them may have fallen on the boxes nearby, and they were such four boxes in polling station No. 14. But the Assistant Returning Officer (R.W. 8) rightly found that they were not gummed to the boxes and included those four boxes in the seventy having no outer symbols. This is borne out by what took place at the time of counting the votes two days later, on 9th January. The petitioner's box 14-4-1 mentioned above had been misplaced as it had no outer symbol and could not be found when the votes in the other boxes of the petitioner were counted. It was subsequently traced and its identity was ascertained in the presence of the candidates and their agents. The petitioner then gave an application complaining that although it had his inner symbol, its outer symbol was that of Shri Mohanlal (Ex. R10). But the Returning Officer immediately made a note on it that the so-called outer symbol had not been 'pasted', and in the report Ex. R11 it is stated, "It is also not correct that it had a outer symbol of Shri Manmohanlal Mathur". The Assistant Returning Officer (R.W. 1) has made an endorsement on it. It is significant that all the four boxes mentioned in Appendix 'D' as having different symbols inside and outside were from Polling station No. 14, and we feel no hesitation in finding that in fact they had no outer symbols at the time of counting and their identity was ascertained from the figures on the paper seal.

It will be seen from Ex. R18 that all the seventy boxes together contained only 3,910 ballot papers. Respondent No. 1 secured at the poll 21,826 votes, the next Shri Mathur secured 18,122 votes, while the petitioner secured 11,947 votes. Even if all the votes in the seventy boxes be deducted from respondent No. 1's 21,828 votes and added to Shri Mathur's votes, the former would have 17,918 votes left and the latter would get 17,032, and still respondent No. 1 would be elected. In fact there was no irregularity or non-compliance with any rule, and the result of the election has not been affected by the absence of outer symbols on some of the boxes. We record our findings accordingly on issues Nos. 10(a) and (b).

As a result of our findings, the petition has to be dismissed. Although some of the allegations made by the petitioner could not be inquired into owing to technical defects in the form of the petition, the petitioner has failed on those which have gone to trial. There is no reason why the costs must not follow the event in this case. On the other hand the petitioner has put in a deliberately false tabular statement regarding the election meetings of respondent No. 1 and the costs said to have been incurred by him on loud speakers, and he made knowingly false allegations about four boxes having different inner and outer

symbols. We think that in view of these false assertions and looking to the protracted trial of this case, we should order him to pay a lump sum of Rs. 600 (rupees six hundred only) as costs to respondent No. 1.

Before conclusion, we desire to express our appreciation of the lucid and exhaustive arguments addressed to us at the bar.

ORDER

The petition is dismissed. The petitioner shall pay Rs. 600 as costs to respondent No. 1. All other parties shall bear their costs, if any.

(Sd.) N. S. LOKUR, *Chairman.*

(Sd.) SARAT CHANDRA ROY CHAUDHURY, *Member.*

(Sd.) AZIZUL HAQUE FAKHRUDDIN, *Member.*

LUCKNOW;
The 27th July, 1953.

APPENDIX 'A'

In view of the clear orders passed by us on the 24th March, 1953, it does appear that some of the columns in the particulars supplied by the petitioner are unnecessary and cannot be taken into consideration. Issue No. 7(a) is confined to the announcements and loud speakers at the meetings mentioned in Annexure 'A'. In that Annexure items Nos. 7 and 14 refer specifically to meetings addressed by Sri G. B. Pant, Respondent No. 1, at Mohalla Azamnagar and Mohalla Moti Park respectively. In the particulars given by the petitioner, however, other meetings at the two Mohallas at which Sri G. B. Pant did not address, have also been included. Thus at item No. 7, the meeting held on 18th January, 1952, and at item No. 14 meetings held on 23rd November 1951, 26th December, 1951, 6th January, 1952, 13th January, 1952 and 26th January, 1952, none of which were addressed by respondent No. 1, have been included. As these meetings are not covered by items Nos. 7 and 14 in Annexure 'A', they will have to be left out of consideration.

As regards some of the other places mentioned in Annexure 'A', where more than one meeting were held, Sri Dar for respondent No. 1 contended that only one meeting at each place should be taken into consideration. But in Annexure 'A' the wording used is "public meetings" and all the meetings held at the places mentioned will have to be regarded as included in that Annexure. It is only in the case of items Nos. 7 and 14 that the meetings are described as those addressed by Sri G. B. Pant.

In column 8 of the particulars, the remuneration said to have been paid by person or persons who made announcements at the meetings on loud speakers and in column No. 14 the names of the parties paid for conveyance used for announcing the meetings, are given. In Annexure 'A', a list is given of public meetings in which loud speaker announcements were made. It does not mention that any announcements were made before the meetings were held. Issue No. 7(a) as amended, also refers to announcements made at the public meetings. It is, therefore, not open to the petitioner to adduce any evidence regarding what was spent for announcements prior to the meetings.

Similarly, the so-called other charges in connection with the installation of loud speakers at the meetings, given in column 17, include lighting charges, constructions of dias, shamianas and hand bills. All these expenses have nothing to do with the loud speakers. They were expenses incurred for the meetings, but cannot be said to be expenses for the installation of loud speakers or for the announcements made through the loud speakers at the meetings. Hence all those charges will have to be left out of consideration.

The expenses incurred by respondent No. 1 on the loud speakers can be taken into consideration, but the expenses incurred by the City Congress Committee shown in column 8 of the particulars given by the petitioner against items Nos. 8 and 13 to 17 have to be left out of consideration. It has been mentioned in paragraph 13 of the petition that the Congress Party as such has spent a large sum of money in furtherance of the election of respondent No. 1 which expenses, if included in the election expenses, would far exceed the maximum limit prescribed under the rules. That paragraph, being not verified has been ordered to be deleted. Hence any expenses incurred by the Congress Committee on loud speakers cannot now be taken into account, nor is it alleged in the particulars that the City Congress Committee paid the charges on behalf of the Respondent No. 1.

As against item No. 4, it is stated in column 8 that the charges were paid by "Sri G. B. Pant through City Congress Committee at Bareilly". That will have to be taken into consideration since it is alleged that it is respondent No. 1 who paid the amount, although through the agency of the City Congress Committee at Bareilly. It is not so stated in column 8 against items Nos. 13 to 17.

It is also argued that the amounts paid by Ram Murti (item No. 18) and S. P. Bakshi and City Congress (items Nos. 19 and 20) should be left out of consideration as it is not alleged that they had written authority from respondent No. 1 to make the payments. This question is left open to be considered after the evidence is recorded.

Only the evidence which is relevant in the light of this order will be allowed to be adduced.

(Sd.) N. S. LOKUR, Chairman.

(Sd.) S. N. MITRA, Member.

(Sd.) AZIZUL HAQUE FAKHRUDDIN, Member.

J. UCKNOW;
T 20th April, 1953.

APPENDIX 'B'

The number of loud speakers which respondent No. 1 has on each day—as found out from the bills attached to the vouchers—except voucher No. 19 and voucher No. 4 which remain unaccounted for as explained in the foot-note.

December 1951

Voucher No.	Name of supplier	No. of sets	Total
18 Dec. F 18	Lachhmi Narain	1	1
19 Dec. F 18	Lachhmi Narain	1	1
20 Dec. F 16	Khanna Radio		
F 18	Lachhmi Narain	2	3
21 Dec. F 18	Lachhmi Narain	1	1
22 Dec. F 18	Lachhmi Narain	1	1
23 Dec. F 18	Lachhmi Narain	1	1
24 Dec.			
25 Dec.			
26 Dec.			
27 Dec. F 18	Lachhmi Narain	1	1
28 Dec. F 18	Lachhmi Narain	1	1
29 Dec. F 18	Lachhmi Narain	1	1
30 Dec. F 18	Lachhmi Narain	1	1
31 Dec. F 18	Lachhmi Narain	1	1

January 1952

1 Jan. F 20	Sharma Sound Service	1	1
2 Jan.			
3 Jan. F 20	Sharma Sound Service	1	1
4 Jan.			
5 Jan. F 18	Lachhmi Narain	1	1
6 Jan. F 18	Lachhmi Narain	1	1
an. F 18	Lachhmi Narain	1	1
an.			
9 Jan.			
10 Jan.			
11 Jan.			
12 Jan. F 17	Singh Radio	1	1
13 Jan. F 17	Singh Radio	1	1
14 Jan. F 17	Singh Radio	1	1
15 Jan. F 17	Singh Radio	1	1

<i>Voucher No.</i>	<i>Name of supplier</i>	<i>No. of sets</i>	<i>Total</i>
16 Jan. F 17	Singh Radio	I }	2
F 20	Sharma Sound Service	I }	
17 Jan. F 17	Singh Radio	I	1
18 Jan. F 18	Lachhmi Narain	I	1
19 Jan. F 17	Singh Radio	I	1
20 Jan. F 17	Singh Radio	I }	2
F 18	Lachhmi Narain	I }	
21 Jan. F 17	Singh Radio	I }	2
F 18	Lachhmi Narain	I }	
22 Jan. F 17	Singh Radio	I }	2
Lachhmi Narain		I }	
23 Jan. F 17	Singh Radio	I }	1
F 11	Amritsar Electric Store	I }	
F 18	Lachhmi Narain	I }	
24 Jan. F 17	Singh Radio	I }	2
F 18	Lachhmi Narain	I }	
25 Jan. F 17	Singh Radio	I }	2
F 18	Lachhmi Narain	I }	
26 Jan. F 17	Singh Radio	I }	2
F 18	Lachhmi Narain	I }	
27 Jan. F 17	Singh Radio	I }	2
F 18	Lachhmi Narain	I }	
28 Jan. F 17	Singh Radio	I }	2
F 18	Lachhmi Narain	I }	
29 Jan. F 17	Singh Radio	I }	
F 17	Singh Radio	I }	
F 18	Lachhmi Narain	I }	
F 20	Sharma Sound Service	I }	4
30 Jan. F 17	Singh Radio	2 }	
F 17	Singh Radio	I }	
F 18	Lachhmi Narain	I }	
F 20	Sharma Sound Service	I }	5

FOOT NOTES

Undated bills

<i>Voucher No.</i>	<i>Date of payment</i>	<i>Name of Payee</i>	<i>Amount paid</i>	<i>Remarks</i>
F. 4	13-1-52	Lachhmi Narain	Rs. 25	For hire of two loud speakers between 20th December and 12th January 1952.
F. 19	5-3-52	P. Mehra & Co.	85	(1) For hire of one loud speaker for procession (29-1-52). (2) For hire of one loud speaker for four days between 20th Dec. and 29th Jan. 1952.

[No. 19/209/52-Elec. III/55.]

By Order,

P. R. KRISHNAM URTHY, Asst. Secy.